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09/430,192	10/29/1999	MICHAEL B. RAYNHAM	10981963-1	6908

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IP ADMINISTRATION
LEGAL DEPARTMENT 20BN
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 05/03/2004

19

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

**Notification of Non-Compliance
With 37 CFR 1.192(c)**

Application No.

09/430,192

Applicant(s)

RAYNHAM ET AL.

Examiner

Tonia L Meonske

Art Unit

2183

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 26 March 2001 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☒ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☒ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☒ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☐ Other (including any explanation in support of the above items):

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR

1.192(c)

1. 37 CFR 1.192 (c) states:

(c) The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by an applicant who is not represented by a registered practitioner:

- (1) Real party in interest. A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest.*
- (2) Related appeals and interferences. A statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.*
- (3) Status of claims. A statement of the status of all the claims, pending or cancelled, and identifying the claims appealed.*
- (4) Status of amendments. A statement of the status of any amendment filed subsequent to final rejection.*
- (5) Summary of invention. A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.*
- (6) Issues. A concise statement of the issues presented for review.*
- (7) Grouping of claims. For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.*
- (8) Argument. The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.*
 - (i) For each rejection under 35 U.S.C. 112, first paragraph, the argument shall specify the errors in the rejection and how the first paragraph of 35 U.S.C. 112 is complied with, including, as appropriate, how the specification and drawings, if any,*
 - (A) Describe the subject matter defined by each of the rejected claims,*
 - (B) Enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and*
 - (C) Set forth the best mode contemplated by the inventor of carrying out his or her invention.*

- (ii) For each rejection under 35 U.S.C. 112, second paragraph, the argument shall specify the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.*
- (iii) For each rejection under 35 U.S.C. 102, the argument shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.*
- (iv) For each rejection under 35 U.S.C. 103, the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied on in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument shall explain why the references, taken as a whole, do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not properly be combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of this paragraph.*
- (v) For any rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.*
- (9) Appendix. An appendix containing a copy of the claims involved in the appeal.*

2. The brief includes a statement that claims 1-10 do not stand or fall together, but fails to present valid reasons in support thereof as required under 37 CFR 1.192(c)(7). MPEP § 1206.

Appellant must explain why the claims of the group are believed to be separately patentable.

Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

3. The brief does not contain the items of the brief required by 37 CFR 1.192(c) under the appropriate headings and/or in the order indicated. The heading "Appendix I" is not an appropriate heading. Please replace the heading "Appendix I" with "Appendix".

4. The brief does not contain a concise explanation of the invention defined in the claims involved in the appeal, which refers to the specification by page and line number, and to the drawing, if any, by reference characters as required by 37 CFR 1.192(c)(5).

5. The brief does not contain a concise statement of the issues presented for review as required by 37 CFR 1.192(c)(6). Each stated issue should correspond to a separate ground of rejection which appellant wishes the Board of Patent Appeals and Interferences to review.

Claims 1-10 each have two separate grounds of rejections. Each issue should address only one grounds of rejection. Issues 2-5 each address two separate grounds of rejections. For example, Issue 2 should be broken down into two issues. The first issue should be "Whether claim 1 is unpatentable under 35 USC 103 over Wirthlin et al. in view of Queue and Page.", and the second issue should be "Whether claim 1 is unpatentable under 35 USC 103 over Huffener in view of Wirthlin et al.". MPEP § 1206 (6).

6. Furthermore, Issue 1 omits a basis. While the statement of the issues must be concise, it should not be so concise as to omit the basis of each issue. For example, the statement of an issue as "Whether claims 1 and 2 are unpatentable" would not comply with 37 CFR 1.192(c)(6).

Rather, the basis of the alleged unpatentability would have to be stated, e.g., "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones." MPEP § 1206 (6).

7. Each issue should be treated under a separate heading. The heading for Issue 5 appears to be missing. See 37 CFR 1.192(c) (8).

8. Appellant is required to comply with provisions of 37 CFR 1.192(c).

Conclusion

Art Unit: 2183

9. To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.192(c) within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonia L Meonske whose telephone number is (703) 305-3993. The examiner can normally be reached on Monday-Friday, 8-4:30.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie P Chan can be reached on (703) 305-9712. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm


EDDIE CHAN
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